

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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TRACY KING,

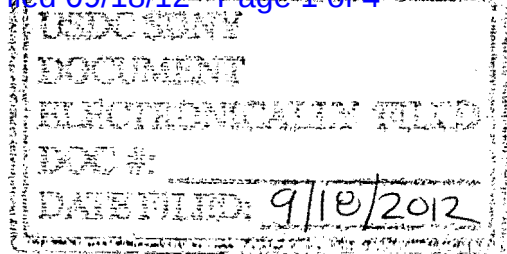
Plaintiff,

v.

U.S. SECURITY ASSOCIATES, INC.,  
Defendant.  
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DEBORAH A. BATTS, United States District Judge.

This matter is before the Court upon the August 22, 2012 Report and Recommendation of United States Magistrate Judge Michael H. Dolinger (the "Report"). Judge Dolinger's Report recommends that Defendant's Motion to Dismiss be (1) GRANTED without prejudice to replead on grounds that Plaintiff failed to exhaust her administrative remedies required for her claims under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. ("Title VII") and Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 621-634 ("ADEA"), (2) GRANTED without prejudice regarding Plaintiff's age-discrimination claims under federal, state, and city law because Plaintiff failed to articulate a viable claim, (3) DENIED regarding Plaintiff's racially-motivated demotion claim because Plaintiff's pleading alleged sufficient facts, and (4) GRANTED regarding Plaintiff's claims of disparate treatment and hostile work environment on the basis of her race because Plaintiff failed to articulate a viable claim. (Report at 9, 14, 19.) Additionally, Judge Dolinger's Report recommends that this Court DECLINE to exercise



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ADOPTION OF REPORT  
AND RECOMMENDATION

supplemental jurisdiction over any remaining state or city law claims under the New York State Human Rights Law, N.Y. Exec. Law §§ 290-297 ("NYSHRL") or the New York City Human Rights Law, N.Y.C. Admin. Code § 8-101 to § 8-131 ("NYCHRL") unless Plaintiff successfully repleads one or more federal claims. (Report at 24.)

"Within fourteen days after being served with a copy [of a Magistrate Judge's Report and Recommendation], a party may serve and file specific written objections to the proposed findings and recommendations." Fed. R. Civ. P. 72(b)(2); accord 28 U.S.C. § 636(b)(1)(C). The district court may adopt those portions of the report to which no timely objection has been made, so long as there is no clear error on the face of the record. Wilds v. United Parcel Serv., Inc., 262 F.Supp.2d 163, 169 (S.D.N.Y. 2003). "[F]ailure to object timely to a magistrate's report operates as a waiver of any further judicial review of the magistrate's decision." Caidor v. Onondaga County, 517 F.3d 601, 604 (2d Cir. 2008) (quoting Small v. Sec. of HHS, 892 F.2d 15, 16 (2d Cir. 1989)). This rule applies to pro se parties so long as the magistrate's report "explicitly states that failure to object to the report within [fourteen (14)] days will preclude appellate review . . ." Small, 892 F.2d at 16.

Despite being advised of the procedure for filing objections in Judge Dolinger's Report and warned that failure to file objections would waive objections and preclude appellate review

(Report at 25), Plaintiff has filed no objections to the Report. Nor has any other Party filed objections to the Report.

Having reviewed the Report and finding no clear error on the face of the record, see 28 U.S.C. § 636(b)(1)(B), it is hereby ORDERED AND ADJUDGED that the Report and Recommendation of United States Magistrate Judge Michael H. Dolinger, dated August 22, 2012, be and the same hereby is APPROVED, ADOPTED, and RATIFIED by the Court in its entirety. Defendant's Motion to Dismiss is hereby (1) GRANTED without prejudice to replead on grounds that Plaintiff failed to exhaust her administrative remedies required for her Title VII and ADEA claims, (2) GRANTED without prejudice regarding Plaintiff's age-discrimination claims under federal, state, and city law, (3) DENIED regarding Plaintiff's racially-motivated demotion claim, and (4) GRANTED regarding the Plaintiff's claims of disparate treatment and hostile work environment on the basis of her race. Additionally, unless Plaintiff successfully repleads one or more federal claims, this Court DECLINES to exercise supplemental jurisdiction over any of Plaintiff's state or city law claims under the NYSHRL or NYCHRL.

Plaintiff is directed to file her Amended Complaint, if she can provide evidence of her exhaustion of administrative remedies and adequately allege a factual basis for one or more employment-discrimination claims, within thirty (30) days of the date of this Order. Failure to do so shall result in the dismissal of her claims with prejudice.

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this Order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal. See Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: New York, New York

September 18, 2012

A handwritten signature in cursive script, reading "Deborah A. Batts", is written over two horizontal lines.

Deborah A. Batts  
United States District Judge